

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JOSIE STRICKLIN

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-03851-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

{¶ 1} On December 15, 2008, at approximately 8:05 a.m., plaintiff, Josie Stricklin, was traveling on US Route 33 in Athens County “entering (an) exit ramp to remain on SR 33 (just past county road 25 exit)” when her 1998 Dodge Grand Caravan struck a large rock laying on the roadway causing substantial damage to the vehicle. Plaintiff described the damage incident recalling that: “I was following a school bus in the straight away of the ramp and could not see the large rock in the center of the lane in front of the bus. The bus drove over it, clearing it. Going approximately 50-55 mph I did not have time to swerve around the rock and hit it straight on.” Plaintiff submitted photographs depicting the rock that her vehicle struck and the particular roadway section where the damage incident occurred. From a review of the photographs it appears that the rock may have rolled onto the roadway from an adjacent hillside.

{¶ 2} Plaintiff implied that the damage to her van was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in failing to maintain the roadway free of hazardous conditions such as the rock on the roadway. Plaintiff filed this complaint seeking to recover damages in the amount of \$1,526.71, the

cost of automotive repair incurred resulting from the December 15, 2008 incident. The \$25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with her damage claim.

{¶ 3} Defendant denied liability based on the contention that no DOT personnel had any knowledge of rock debris on the roadway prior to plaintiff's December 15, 2008 property damage event. Defendant has no record of receiving any calls or complaints from any entity regarding rock debris prior to plaintiff's damage occurrence. Defendant did acknowledge receiving a call from the Athens County State Highway Patrol about the particular rock after plaintiff's incident and a DOT crew was dispatched immediately to the scene to remove the rock from the roadway at milepost 15.90 on US Route 33. Defendant suggested that the rock "debris existed in that location for only a relatively short amount of time before plaintiff's incident." Defendant asserted that plaintiff did not produce evidence "which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of ODOT was the cause of Plaintiff Stricklin's incident." Defendant related that the DOT "Athens County Manager conducts roadway inspections on a routine basis, at least one to two times a month" and inspected the particular section of US Route 33 on December 9, 2008, six days before plaintiff's damage event. No rock was observed on the roadway at that time. Defendant contended that plaintiff did not offer any evidence to establish that the property damage claimed was caused by any negligent act or omission on the part of DOT personnel.

{¶ 4} Defendant has the duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335, 3 O.O. 3d 413, 361 N.E. 2d 486. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189, 678 N.E. 2d 273; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 588 N.E. 2d 864.

{¶ 5} In order to prove a breach of the duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247, 517 N.E. 2d 1388. Defendant is only liable for roadway conditions of which it has notice but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1, 31 OBR

64, 507 N.E. 2d 1179.

{¶ 6} Generally to recover on a claim of roadway debris, plaintiff must prove either: 1) that defendant had actual or constructive notice of the defect (debris) and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD. For constructive notice to be proven, plaintiff must show that sufficient time has elapsed after the dangerous condition (debris) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Dept. of Transportation* (1978), 78-0126-AD .

{¶ 7} In the instant claim, plaintiff has failed to prove that defendant had requisite notice of the rock debris her vehicle struck. No facts have shown that defendant had actual or constructive notice of any rock fall which may have been the origin of the rock on the roadway. See *Hanlin v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2004-10582-AD, 2005-Ohio-2040; *Clarke v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2005-02168-AD, 2005-Ohio-3240.

{¶ 8} For plaintiff to prevail on a claim of negligence, she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St. 3d 79, , 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 79, 472 N.E. 2d 707. Plaintiff has the burden of proving, by a preponderance of the evidence, that she suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However, "[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, 30 O.O. 415, 61 N.E. 2d 198, approved and followed.

{¶ 9} Assuming that the damage-causing rock rolled onto the roadway from the adjacent hillside, plaintiff may still recover on a claim of negligence. Plaintiff has not offered evidence to prove that defendant knew or should have known about any rock that resulted in plaintiff's property damage was likely to occur on December 15, 2008.

Plaintiff has failed to prove that the particular hillside from which the roadway debris likely originated showed any signs of instability before December 15, 2008. Any precautionary and inhibiting measures taken by defendant were adequate and did not fall below the standard of care owed to the traveling public. Consequently, plaintiff has failed to present any set of facts to invoke ensuing liability on DOT. See *Mosby v. Dept. of Transportation* (1999), 99-01047-AD; also *Rupert v. Ohio Dept. of Transp., Dist. 11, Ct. of Cl. No. 2008-01294-AD, 2008-Ohio-4192.*

{¶ 10} Plaintiff has not proven, by a preponderance of the evidence, that defendant failed to discharge a duty owed to her or that her injury was proximately caused by defendant's negligence. Plaintiff failed to show that the damage-causing object was connected to any conduct under the control of defendant, or any negligence on the part of defendant. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Consequently, plaintiff's claim is denied.

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JOSIE STRICKLIN

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-03851-AD

Clerk Miles C. Durfey

ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

MILES C. DURFEY
Clerk

Entry cc:

Josie Stricklin
5888 University Hts.
Athens, Ohio 45701

Jolene M. Molitoris, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

RDK/laa
8/4
Filed 9/23/09
Sent to S.C. reporter 1/15/10